

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.
SIXTH DIVISION

DISTRICT COURT

LISA J. BETCHER

v.

DEPARTMENT OF LABOR AND TRAINING, :
BOARD OF REVIEW and :
THE KITCHEN COUNTERTOP CENTER :
Of NEW ENGLAND, LLC :

:
:
:
:
:
:
:
:

A.A. No. 11-80

JUDGMENT

This cause came before Isherwood J. on Administrative Appeal, and upon review of the record and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision of the Board is affirmed.

Dated at Providence, Rhode Island, this 17th day of September, 2012.

Enter:

By Order:

/s/ _____

/s/ _____

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS

**PROVIDENCE, Sc.
SIXTH DIVISION**

DISTRICT COURT

LISA J. BETCHER

:

v

:

A.A. No.: 11 - 80

:

:

**DEPARTMENT of LABOR and TRAINING,;
BOARD OF REVIEW,
and THE KITCHEN COUNTERTOP
CENTER of NEW ENGLAND, LLC**

:

:

:

DECISION

ISHERWOOD, J This matter is before the Court on the complaint of Ms. Lisa J. Betcher (“Ms. Betcher”) seeking judicial review of a final decision rendered by respondent Board of Review (“Board”) of the Rhode Island Department of Labor and Training dated June 15, 2011. On said date, the Chairman of the Board affirmed the decision of a Referee denying that Ms. Betcher was entitled to receive unemployment benefits under the Rhode Island Employment Security Act. This matter has been referred to this Court for decision and this court has jurisdiction under Rhode Island General Laws 1956 § 28-44-52.

FACTS AND TRAVEL OF THE CASE

The facts and travel of the case are as follows:

The claimant, Lisa J. Betcher, was employed by The Kitchen Countertop Center of New England for approximately five (5) months with her last date of employment on August 18, 2010 when she was terminated by the employer. Ms.

Betcher thereafter filed a claim for benefits on October 8, 2010 and the Director determined that Ms. Betcher was eligible for unemployment benefits pursuant to Section 28-44-18 of the Rhode Island Employment Security Act. Benefits, therefore, were initiated at that time.

Employer, The Kitchen Countertop Center of New England (hereinafter referred to as "Kitchen Countertop") filed a timely appeal on October 19, 2010. Said appeal was addressed at a hearing conducted by a Referee on February 28, 2011 and the Referee, after testimony from a representative of Kitchen Countertop, reversed the Director's original decision allowing benefits. The Referee found that the employer had met its burden and determined that Ms. Betcher was discharged under qualifying circumstances under the provisions of § 28-44-18 of the Security Act. Ms. Betcher was not present at the hearing on February 28, 2011 and the record appears to be silent as to any reason why she did not attend.

On March 31, 2011, Ms. Betcher filed her appeal timely and said appeal was heard by the Board of Review, the Chairman sitting alone, on June 2, 2011. At the hearing testimony was presented by Ms. Betcher who was represented by counsel and from employer Kitchen Countertop, through its representative, Joseph Pakuris, owner.

The Chairman of the Board affirmed the Referee's decision and determined that Ms. Betcher was terminated from her job for disqualifying reasons under Section 28-44-18 of the Rhode Island Employment Security Act. Specifically, the

Chairman found that the claimant, Ms. Betcher, often performed her duties in a careless manner, despite efforts by Kitchen Countertop to address these issues following discussions and meetings with Ms. Betcher. The record — according to the Chairman — showed credible evidence that there was an intentional disregard for the employer’s interest by the employee. Her actions included failure to order the correct product, failure to charge sales tax and the belief that she could use Facebook during business hours because her bosses also used Facebook during work hours.

APPLICABLE LAW

This case involves the application and interpretation of the following provision of the Rhode Island Employment Security Act, which specifically addresses misconduct as a circumstance which disqualifies a claimant from receiving benefits; Gen. Laws 1956 § 28-44-18, provides:

28-44-18. Discharge for misconduct. --- An individual who has been discharged for proved misconduct connected with his or her work shall become ineligible for waiting period credit or benefits for the week in which that discharge occurred and until he or she establishes to the satisfaction of the director that he or she has, subsequent to that discharge, had at least eight (8) weeks of work, and in each of that eight (8) weeks has had earnings of at least twenty (20) times the minimum hourly wage as defined in chapter 12 of this title for performing services in employment for one or more employers subject to chapters 42 – 44 of this title. Any individual who is required to leave his or her work pursuant to a plan, system, or program, public or private, providing for retirement, and who is otherwise eligible, shall under no circumstances be deemed to have been discharged for misconduct. If an individual is discharged and a complaint is issued by the regional office of the National Labor Relations board or the state labor relations board that an unfair labor practice has occurred in relation to the discharge, the individual shall

be entitled to benefits if otherwise eligible. For the purposes of this section, "misconduct" is defined as deliberate conduct in willful disregard of the employer's interest, or a knowing violation of a reasonable and uniformly enforced rule or policy of the employer, provided that such violation is not shown to be as a result of the employee's incompetence. Notwithstanding any other provisions of chapters 42 – 44 of this title, this section shall be construed in a manner that is fair and reasonable to both the employer and the employed worker.

In the case of Turner v. Department of Employment and Training, Board of Review, 479 A.2d 740, 741-42 (R.I. 1984), the Rhode Island Supreme Court adopted a definition of the term, "misconduct," in which they quoted from Boynton Cab Co. v. Newbeck, 237 Wis. 249, 259-60, 296 N.W. 636, 640 (1941):

‘Misconduct’ * * * is limited to conduct evincing such willful or wanton disregard of an employer’s interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employee’s duties and obligations to his employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed ‘misconduct’ within the meaning of the statute.

The employer bears the burden of proving by a preponderance of evidence that the claimant’s actions constitute misconduct as defined by law.

STANDARD OF REVIEW

The standard of review by which this court must consider appeals from the Board of Review is provided by Gen. Laws 1956 § 42-35-15(g), a section of the state Administrative Procedures Act, which provides as follows:

42-35-15. Judicial review of contested cases.

(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Thus, on questions of fact, the District Court “* * * may not substitute its judgment for that of the agency and must affirm the decision of the agency unless its findings are ‘clearly erroneous.’ ”¹ The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact.² Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result.³

¹ Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing R.I. GEN. LAWS § 42-35-15(g)(5).

² Cahoone v. Board of Review of the Dept. of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

³ Cahoone v. Bd. of Review of Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968). Also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039 (R.I. 1986).

The Supreme Court of Rhode Island recognized in Harraka, supra page 4, 98 R.I. at 200, 200 A.2d at 597 (1964) that a liberal interpretation shall be utilized in construing and applying the Employment Security Act:

* * * eligibility for benefits is to be determined in the light of the expressed legislative policy that “Chapters 42 to 44, inclusive, of this title shall be construed liberally in aid of their declared purpose which declared purpose is to lighten the burden which now falls upon the unemployed worker and his family.” G.L. 1956, § 28-42-73. The legislature having thus declared a policy of liberal construction, this court, in construing the act, must seek to give as broad an effect to its humanitarian purpose as it reasonably may in the circumstances. Of course, compliance with the legislative policy does not warrant an extension of eligibility by this court to any person or class of persons not intended by the legislature to share in the benefits of the act; but neither does it permit this court to enlarge the exclusionary effect of expressed restrictions on eligibility under the guise of construing such provisions of the act.

ANALYSIS

This matter is before the Court for determination as to whether or not the employer, Kitchen Countertop, acted properly in terminating Ms. Betcher an employee under qualifying circumstances under the provisions of § 28-44-18 of the Rhode Island Security Act. This Court is convinced that the employer has met its burden by credible evidence and proven that employee did not perform her duties in a proper manner. Specifically, this Court finds that since the claimant was an experienced kitchen designer and had been employed in the labor market previously, the record has demonstrated that her conduct as an employee was in reckless disregard as her obligations as an employee and contrary to the reasons for hiring her. The record clearly shows that Ms. Betcher did not care about her

work product nor the negative impact it had on the company for which she worked for five months. The record also demonstrates that despite efforts by Kitchen Countertop to address and assist Ms. Betcher's disregard following problems with her kitchen design work, she intentionally failed to demonstrate any attempt to assist her own cause.

CONCLUSION

After a thorough review of the entire record, this Court finds that the Board of Review's decision to deny unemployment benefits to the claimant was not "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." Gen. Laws 1956 § 42-35-15(g)(3)(4). Accordingly, the decision rendered in this case by the Board of Review is hereby **AFFIRMED**.